its character and its quality from the nature of the law towards whose violation it is or was directed, and in this particular instance it was to violate the narcotics laws of the United States. There is no doubt, therefore, as a consequence, that a person convicted of a conspiracy directed towards the violation of the statutes in relation to narcotic drugs is guilty of a violation of law *relating to* the illicit traffic in the same. Any other conclusion would do violence to common sense and the plain intent of the statute itself.

Another question is whether or not the warrant of deportation complies with the nature of the crime of which the plaintiff was convicted. It does. It specifically states in the last sentence that he was convicted of "conspiracy (18 U.S.C. 371) to violate the Jones-Miller Act (21 U.S.C. 174) and the Harrison Narcotics Act (26 U.S.C. 2553 (a))." The fact that it is recited in the body of the warrant above this sentence that he has been "convicted of a violation of any law or regulation governing the taxing . . ." of such drugs is mere surplusage and addenda. It actually adds nothing and it takes nothing away. The fact is that he was *not* so convicted, *but he was convicted of conspiracy relating to such.*

The second argument in relation to so-called denial of due process is without substance. *Bannout* v. *Brownell*, 129 Fed.Supp.488 can be distinguished. In that case there *was* a violation of a regulation in that the decision of the Board of Immigration Appeals was not transmitted to plaintiff's counsel. This is wanting here. With reference, however, to that part of the opinion of the Court holding that upon reference to the Attorney General of the case for review by the Board the regulation *requires* that the plaintiff or his attorney be notified and "that it necessarily implies that notice of this reference must be given to the alien or his counsel in order that an opportunity may be accorded for the submission of briefs or

memoranda or other material to the Attorney General in connection with his review of the decision of the Board" this Court does not concur. The pertinent regulation is set forth in Title 8 C.F.R. 6(f), p. 18. It reads as follows: "The decision of the Board shall be in writing . . ." and (h) "The Board shall refer to the Attorney General for *review* all cases . . ." and nowhere is it provided specifically for notification of this fact to the individual concerned nor is it implied. *Morgan* v. *United States*, 298 U.S. 468, upon which the Court relied, also can be distinguished.[1] There the Court was concerned with the statute specifically providing for a "full hearing," and the Court held that the words of the statute meant just that. Cf. also *Ex Parte Bridges*, 49 Fed. Supp. 292 at 304, affirmed 144 F.2d 927, and reversed on *other grounds*; Bridges v. Wixon 326 U.S. 135.

Order accordingly.

/s/ MATTHEW F. McGUIRE
MATTHEW F. McGUIRE
United States District Judge.

March 27, 1957

[1] See also, generally, Morgan v. U.S., 304 U.S. 1.

WARRANT

For Arrest of Alien

UNITED STATES OF AMERICA
Department of Justice
Immigration and Naturalization Service
San Francisco, California

No. A-1732847

To Immigration Officer John H. McGowan

Or to any officer in the service of the United States Immigration and Naturalization Service

WHEREAS, from evidence submitted to me, it appears that the alien SEBASTIANO NANI who entered this country at New York, New York on the 20th day of October 1924 has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the folowing provisions of law, and for the following reasons to wit:

Section 241(a) of the Immigration and Nationality Act, in that, he has been convicted of a violation of any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation or exportation, or the possession for the purpose of manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation or exportation of any of the drugs described therein; Conspiracy (18 USC 371) to violate Jones-Miller Act (21 USC 174), and Harrison Narcotic Act (26 USC 2553 (a)).

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you

to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The expenses of detention, hereunder, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1955.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 30th day of August, 1954.

/s/ BRUCE G. BARBER
BRUCE G. BARBER
District Director
San Francisco District

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service
Seattle

December 15, 1954

File: A1-732-847

In Re: SEBASTIANO NANI

IN DEPORTATION PROCEEDINGS

IN BEHALF OF RESPONDENT:

Edwards E. Merges, Attorney
1511 Smith Tower, Seattle, Wash.

CHARGES:

Warrant: Immigration & Nationality Act - Convicted of violation of law governing taxing, etc., of narcotic drugs: Conspiracy to violate 21 USC 174 and 26 USC USC 2553(a).

Lodged: None

APPLICATION: None

DETENTION STATUS: Incarcerated U.S. Penitentiary, McNeil Island, Wash.

WARRANT OF ARREST SERVED: August 30, 1954.

DISCUSSION: This record relates to a 48 year old married male, a native and citizen of Italy, who entered the United States as a stowaway at New York, N.Y., on October 2, 1924. This unlawful entry was corrected by the relief of suspension of deportation on May 11, 1944 pursuant to Section 19(c)(2) of the Immigration Act of 1917, to show a lawful entry for permanent residence as of October 2, 1924. On August 27, 1954 the respondent was convicted by a verdict of guilty in the United States District Court at San Francisco for conspiracy, in violation of 18 USC 371, in that he conspired to sell heroin in violation of Sections 2553 and 2557 of 26 USC and to conceal and facilitate the concealment and transportation of heroin, in violation of Section 174 21 USC. The crime of conspiracy[1] is complete upon the commission of an overt act[1]. The overt act pursuant to the conspiracy for which the respondent was convicted is found in Count 24 of the indictment. The substantive offenses in violation of Section 2553 and 2557, and Section 174 of 21 USC, are both violations of laws governing the sales and importation, respectively, of heroin. Accordingly, it is concluded that the respondent is deportable on the charge as stated in the warrant of arrest.

The respondent is married to a United States citizen. There are three children of this marriage. His wife and family are all residing in New York. His wife is presently dependent upon his two eldest children for support. He has no assets. Apart from his present conviction for narcotics, he was also convicted on May 7, 1954 in the United States District Court at Brooklyn, New York for

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[1] *Hall* v. *U.S.*, 109 F. 2d 976 (CCA).

bribery. He has not specified any country to which he desires to be deported in the event deportation is ordered.

FINDINGS OF FACT: Upon the basis of all the evidence adduced it is found:

(1) That the respondent is an alien, a native and citizen of Italy;

(2) That the respondent was admitted to the United States at New York, N.Y., October 2, 1924 for lawful permanent residence;

(3) That the respondent was convicted in the United States District Court at San Francisco August 27, 1954 by verdict of guilty of conspiracy, in violation of 18 USC 371, in that he conspired to violate 26 USC 2553 and 2557, and 21 USC 174.

CONCLUSION OF LAW: Upon the basis of the foregoing findings of fact, it is concluded:

That under Section 241(a)(11) of the Immigration and Nationality Act the respondent is subject to deportation in that he has been convicted of a violation of any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation or exportation, or the possession for the purpose of manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation or exportation of any of the drugs described therein; Conspiracy (18 USC 371) to violate Jones-Miller Act (21 USC 174) and Harrison Narcotic Act (26 USC 2553(a)).

ORDER: It is ordered that the alien be deported from the United States in the manner provided by law on the charge contained in the warant of arrest.

DAVID S. CALDWELL.
Special Inquiry Officer

U. S. DEPARTMENT OF JUSTICE
BOARD OF IMMIGRATION APPEALS

File: A-1732847—Seattle

In re: SEBASTIANO NANI

IN DEPORTATION PROCEEDINGS

IN BEHALF OF RESPONDENT:

Marion Schwartz, Attorney
Mills Building
Washington 6, D. C.
(Heard: January 26, 1955)
(Brief filed)

CHARGES:

Warrant:—Immigration and Nationality Act—Convicted of violation of law governing taxing, etc., of narcotic drugs: Conspiracy (18 USC 371) to violate Jones-Miller Act (21 USC 174) and Harrison Narcotic Act (26 USC 2553(a)).

Lodged:—None

APPLICATION: None

DETENTION STATUS: Incarcerated U.S. Penitentiary, McNeil Island, Wash.

The case comes forward on appeal from the order of the special inquiry officer dated December 15, 1954 ordering the alien deported on the charge stated in the warrant of arrest.

The record relates to a native and citizen of Italy, 48 years old, male, who last entered the United States at the port of New York, New York on October 2, 1924 as a stowaway. He was previously granted suspension of deportation and his status was adjusted under Section 19

(c)(2) of the Immigration Act of 1917 on May 11, 1944 to show a lawful entry for permanent residence on October 2, 1924.

On August 27, 1954 in the United States District Court at San Francisco, Southern District of California, Southern Division, the respondent was convicted of the crime of conspiracy in violation of 18 USC 371. The record of conviction shows that the respondent was charged in the twenty-fourth count with conspiracy (18 USC 371) with a number of other persons in that he conspired with certain named persons to sell, dispense and distribute heroin in violations of Sections 2553 and 2557 of Title 26 United States Code, and to conceal and facilitate the concealment and transportation of quantities of heroin imported into the United States contrary to law as the said defendant well knew in violation of Section 174 of Title 21 United States Codes. The acts in furtherance of the conspiracy, relating to the respondent are charged in Paragraphs 33 and 34 of the overt acts in the indictment, and occurred on or about February 10, 1951.

Deportation of the alien is sought under Section 241(a)(11) of the Immigration and Nationality Act. This section provides for the deportation of any alien who:

> (11) is or hereafter at any time after entry has been, a narcotic drug addict, or who at any time has been convicted of a violation of any law or regulation relating to the illicit traffic in narcotic drugs, or who has been convicted of a violation of any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation or exportation of opium, coca leaves, heroin, marihuana, any salt derivative or preparation of

opium or coca leaves or isonipecaine or any addiction-forming or addiction sustaining opiate.

Previously, deportability based upon the illegal traffic in narcotics was contained in the Act of February 18, 1931, as amended, (8 USC 156(a)) which provided:

> That any alien * * * who, after the enactment of this Act, shall be convicted for violation or *conspiracy to violate* any statute of the United States * * * taxing, prohibiting or regulating the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of * * * heroin * * * shall be taken into custody and deported in manner provided in Sections 19 and 20 of the Act of February 5, 1917 * * *. (Underscoring supplied).

A comparison of the 1931 and the 1952 Acts concerning deportation on the ground of illicit traffic in narcotics reveals that the former specifically includes not only a conviction for a violation of a narcotic trafficking statute but also a conviction for conspiracy to violate such a statute, while the latter act is silent on this point of conspiracy and refers only to a conviction of a violation of any law or regulation *relating* to the illicit traffic in narcotic drugs. We conclude that this omission is fatal insofar as the present conviction is concerned, since in the instant case the alien has been convicted only of conspiracy in violation of 18 USCA 371. While it is true that the substantive acts which are charged in the record of conviction as the objects of the conspiracy relate to the illicit traffic in narcotics it is well settled that a conspiracy to commit a crime is a different offense, notwithstanding that the substantive offense is charged as one of the overt acts committed in furtherance of the conspiracy.[1] The crime of conspiracy to commit an offense

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[1] *Braverman* v. *United States*, 317 US 49 (1942); *United States* v. *Bayer*, 331 U.S. 532 (1947).

is distinct from the offense itself[2] It has been repeatedly declared in decisions of the Supreme Court that a conspiracy to commit a crime is a different offense from the crime that is the object of the conspiracy.[3] The conspiracy is the crime, however diverse its object. A conspiracy is not the commission of the crime which it contemplates, and neither violates nor "arises under" the statute whose violation is its object.[4]

It is therefore concluded that the crime of conspiracy in violation of Section 371, Title 18 USCA is a separate and distinct offense from the substantive offense charged in the record of conviction and that the crime of conspiracy does not constitute a conviction of a violation of a law relating to the illicit traffic in narcotic drugs. The proceedings will be terminated.

ORDER: It is ordered that the proceedings be and the same are hereby terminated.

Chairman

COMMISSIONER'S MOTION

DISCUSSION: The above-named alien was found deportable by the Special Inquiry Officer, after hearing, by reason of the alien's conviction on August 27, 1954, for conspiracy (18 U. S. C. 371) to violate certain laws relating to the illicit traffic in narcotic drugs.

The Board of Immigration Appeals has now entered an order reversing the Special Inquiry Officer and terminating the deportation proceedings. The Board reaches the conclusion that the crime of "conspiracy" in violation of

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[2] *United States* v. *McElvain*, 272 US 633 (1926).

[3] *United States* v. *Rabinowich*, 238 US 87 (1915) and cases cited therein.

[4] *United States* v. *Lutwak*, 195 F. 2d 748 (C.A.7, 1952).

section 371, Title 18 U. S. C. is a separate and distinct offense from the substantive offense charged in the record of conviction and does not constitute a violation of law relating to the illicit traffic in narcotic drugs within the meaning of section 241 (a) (11) of the Immigration and Nationality Act. The Board supports its conclusion by pointing to the fact that the predecessor statute, the Act of February 18, 1931, specifically referred to "conspiracy to violate" the narcotic laws while section 241 (a) (11) omits any such reference.

The Service believes that the Board's interpretation of the statute is erroneous. It is evident from a reading of the legislative history of the Immigration and Nationality Act that Congress intended not to limit but to broaden the area of deportability with respect to aliens trafficking in illicit drugs. Congress was aiming not only at the small-time "dope peddlers" but at the bosses who control and direct this nefarious traffic. These men are, more often than not, indictable as conspirators.

The omission of which the Board speaks is not significant. More than likely Congress felt it was unnecessary to include any specific reference to "conspiracy" to violate the narcotic laws in view of the unrestricted sweep of the language contained in section 241 (a) (11). Nowhere in the legislative history of the Immigration and Nationality Act is there any indication that Congress intended to relieve from the consequences of deportation those convicted of conspiring to violate the narcotic laws while enforcing expulsion only against those convicted of substantive narcotic offenses. A plain reading of the language in section 241 (a) (11) negates any such conclusion. The statute is broad enough to encompass convictions for conspiracy whenever such conspiracy has as its object violation of the laws relating to the illicit traffic in narcotic drugs.

REQUEST IS HEREBY MADE that this case be referred to the Attorney General for review pursuant to 8 CFR 6.1 (h)(iii).

OFFICER OF THE ATTORNEY GENERAL
WASHINGTON, D. C.

September 23, 1955

File A-1732847—Seattle

In re Sebastiano Nani

Before the Attorney General in Deportation Proceedings

The above captioned case was referred to the Attorney General by the Board of Immigration Appeals pursuant to 8 C. F. R .Section 6.1 (b) (i).

The record relates to a native and citizen of Italy who last entered the United States on October 2, 1924, as a stowaway. On May 11, 1944, he was granted suspension of deportation and his status adjusted under Section 19 (c) (2) of the Immigration Act of 1917.

On August 27, 1954, in the Southern District of California, Nani was convicted of the crime of conspiracy in violation of 18 USC § 371, in that he conspired with others to sell, dispense and distribute heroin in violation of 26 USC §§ 2553, 2557, and to conceal and facilitate the concealment and transportation of, heroin in violation of 21 USC § 174.

The Special Inquiry Officer found the alien deportable under Section 241 (a) (11) of the Immigration and Nationality Act of 1952. The Board of Immigration Appeals ordered the proceeding terminated on the ground that Section 241 (a) (11), which provides for the deportation of aliens who traffic in narcotics, does not embrace aliens convicted of "conspiracy to violate" narcotic

laws. The Board's opinion points out that the prior law, the Act of February 18, 1931, specifically included the phrase "conspiracy to violate". The Board attaches controlling importance to the absence of the phrase in the 1952 Act.

Section 241 (a) (11) reads as follows:

> "(11) is, or hereafter at any time after entry has been, a narcotic drug addict, or who at any time has been convicted of a violation of any law or regulation relating to the illicit traffic in narcotic drugs, or who has been convicted of a violation of any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation or exportation of opium, coca leaves, heroin, marihuana, any salt derivative or preparation of opium or coca leaves or isonipecaine or any addiction-forming or addiction sustaining opiates."

I agree with the Board that the crime of conspiracy as defined by 18 USC § 371, is a separate and distinct offense from the crime which is the object of the conspiracy. Braverman v. United States, 317 U. S. 49 (1942); United States v. Bayer, 331 U. S. 532 (1947); American Tobacco Company v. United States, 328 U. S. 781 (1946); United States v. McElvain, 272 U. S. 633 (1926). I do not agree, however, with the Board's ultimate conclusion with respect to its interpretation of the Immigration and Nationality Act of 1952. The controlling phrase in Section 241 (a) (11) is "relating to". On its face it is broad enough to cover a conviction for conspiracy to violate the narcotic laws. Courts have construed the phrase to have broad coverage. Bowles v. Ohio Fuel Gas Co., 65 F. Supp. 426 (N. D. Ohio 1946), aff'd 158 F. 2d 814 (6th Cir. 1947); Commonwealth v. Mathues, 210 Pa. 372, 407, 59 A 961, 975 (1904).

The Subcommittee of the Senate Committee on the Judiciary, reporting on the Bill, stated (S. R. 1515, 4/20/50):

> "The sub-committee recommends that the immigration laws contain specific provision for the deportation of aliens who have been convicted of any law pertaining to narcotics. Such aliens should be deportable, whether the conviction occurred prior to or after entry into the United States. The deportable class will include those convicted under any law in this country pertaining to narcotics or under any such law of a foreign country."

It seems clear that it was the Subcommittee's intention to broaden the coverage of the immigration laws with respect to aliens convicted of laws "pertaining to narcotics".

For the foregoing reasons the decision and order of the Board are reversed.

WILLIAM P. ROGERS
Acting Attorney General

Sept. 23, 1955